UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 24, 2024

Kenneth M. Silverman
Olshan Frome Wolosky LLP

Re: GameStop Corp. (the "Company")
Incoming letter dated February 8, 2024

Dear Kenneth M. Silverman:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Daniel Lawson for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company work with its transfer agent to find a suitable custodian for IRA account holders that wish to have their shares held in the DRS position, or consider switching transfer agents.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Daniel Lawson

OLSHAN

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TELEPHONE: 212.451.2300 ▪ FACSIMILE: 212.451.2222

February 8, 2024

VIA ONLINE PORTAL SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *GameStop Corp.*
*Shareholder Proposal of Daniel Lawson*
*Securities Exchange Act of 1934 ("Exchange Act") — Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, GameStop Corp. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal and statement in support thereof (the "Proposal") from Daniel Lawson (the "Proponent"). A copy of the Proposal is attached to this letter as Exhibit A.

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the date on which the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Company received the below Proposal from the Proponent, which states in relevant part as follows:

> My proposal is simple - protect shareholders by working with your transfer agent to find a suitable custodian for IRA account holders that wish to have their GME shares held in the DRS position. If Computershare is unable or unwilling to assist, GME should consider switching transfer agents.

## BASES FOR EXCLUSION

The Company respectfully requests the Staff's concurrence that the Company may exclude the Proposal from its 2024 Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations.
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal in the manner that the Proposal requests.
- Rule 14a-8(i)(3) because it is impermissibly misleading in violation of Rule 14a-9 under the Exchange Act.

## ANALYSIS

### I. The Proposal May Be Excluded from the Company's 2024 Proxy Materials Pursuant to Rule 14a-8(i)(7) Because It Relates to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." SEC Release No. 34-40018 (May 21, 1998) (the "1998 Release"). As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Proposal implicates both of these considerations.

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the relationship between the Company and its transfer agent, Computershare, the range of services

provided by Computershare, and the details of accounts registered via Computershare. The Proposal requests that the Company work with Computershare to find a "suitable custodian" for IRA account holders that wish to have their Company shares directly registered. It further states that if Computershare is unwilling or unable to assist, then the Company should consider terminating its relationship with Computershare. Computershare is the Company's transfer agent and does not act as an IRA custodian. Whether to request an expansion of services provided by the Company's transfer agent or to terminate the Company's relationship with its transfer agent are decisions that involve a broad range of business considerations, such as timing, cost, ease of administration, availability of alternatives, limits of transfer agent functions and contractual obligations. None of these considerations, let alone the interaction among them, is appropriate for direct oversight by shareholders who lack the requisite day-to-day familiarity with the business. Were such decisions subject to direct shareholder oversight, the Company would be significantly hindered in its day-to-day operations.

In addition to interfering with management's day-to-day operations, the Proposal also seeks to "micro-manage" the Company. Specifically, the Proposal instructs the Company to modify the details of its DirectStock Plan. Determinations about how and whether to amend a stock purchase plan are inherently complex, and shareholders as a group are not in an appropriate position to make informed decisions on such determinations because such determinations require analysis of costs, benefits, management of activity, and numerous other considerations.

Pursuant to Rule 14a-8(i)(7), the Staff has consistently concurred that a company's decisions with respect to and relationship with its transfer agent involve ordinary business operations and are therefore not a proper subject for shareholder oversight. For example, in *Ameren Corporation* (Feb. 27, 2000), the Staff concurred with the exclusion pursuant to Rule 14a-8(i)(7) of a shareholder proposal mandating that the company and its transfer agent not show antagonism to shareholders applying for nonresident alien status in connection with tax withholdings, and aid shareholders in filling out IRS Forms W-8 and W-9 necessary to claim that status. The company in *Ameren Corporation* argued that "compliance with the Proposal would implement policies which are not in the interest of the Company and is likely to result in actions that are inconsistent with the requirements of the Code." The Staff in *General Electric Company* (Jan. 5, 2005) concurred with the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that the company's board adopt a policy that the selection of the company's transfer agent be submitted to shareholders for ratification. In concurring with the exclusion of the proposal, the Staff noted that the proposal related to the company's "ordinary business operations (i.e., the selection of GE's transfer agent and registrar)." See also *AT&T Corp.* (Jan. 30, 2001) (in which the Staff concurred in exclusion of a proposal requesting that company terminate its transfer agent); *Schering-Plough Corporation* (Jan. 12, 1993) (in which the Staff concurred in exclusion of a proposal requiring the company to discontinue using its present stock transfer agent and to substitute one of two named transfer agents); *Lance, Inc*. (Feb. 12, 1981) (in which the Staff concurred in exclusion of a proposal to terminate company's outside legal counsel and transfer agent).

Additionally, by urging the appointment of a "suitable custodian" for IRA account holders via Computershare, and requesting that the company terminate its relationship with its transfer agent if unsuccessful, the Proposal impedes on ordinary business matters that are within

the sole discretion of the board of directors pursuant the Company's bylaws and the Delaware General Corporation Law. The logistics of the Company's relationship with Computershare involve careful consideration by the Company's board of directors and management, using their good faith business judgment of the best interests of the Company, and are based on an in-depth knowledge of the Company's business. These are the kind of complex matters on which shareholders, as a group, would be unable to make an informed judgment, "due to their lack of... intimate knowledge of the [company's] business." See Exchange Act Release No. 34-12999 (Nov. 22, 1976). Allowing shareholders to decide on such matters would result in "micro-management" of the Company and the Company's board of directors, a situation that the Commission consistently sought to prevent.

The Proposal also does not involve a significant policy issue. As set out in the 1998 Release, proposals "focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable [under Rule 14a-8(i)(7)], because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Accordingly, and as is appropriate, an issue must meet certain standards to be deemed a significant policy issue. In determining whether an issue should be deemed a significant policy issue, the Staff considers whether the issue has been the subject of widespread and/or sustained public debate. The issue of whether the Company should appoint custodians for IRA account holders or terminate its relationship with its transfer agent do not meet this standard, as the Company is not aware of any widespread or sustained public debate regarding this issue.

Accordingly, we believe that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

## II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power Or Authority To Implement The Proposal In The Manner That The Proposal Requests.

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal "[i]f the company would lack the power or authority to implement the proposal." Notably, the Commission has stated that exclusion under Rule 14a-8(i)(6) "may be justified where implementing the proposal would require intervening actions by independent third parties." Exchange Act Release No. 40018 at n.20 (May 21, 1998).

The Proposal demands that the Company and its transfer agent take actions with respect to third-party organizations that offer IRA plans and require the custodians of such plans to directly register shares of the Company that are offered under such plans. Neither the Company nor its transfer agent act in the capacity of a custodian for IRA plans. Computershare does not offer IRA services, and is merely the Company's record keeper. Additionally, Computershare has expressed to the Company that it has no present intention to begin acting as a custodian for IRA plans. The Company cannot require third-party organization with whom it has no contractual relationship or intention to conduct business with to provide the type of service the Proposal requests. The Company also cannot force Computershare to act.

The Staff has concurred with the exclusion of proposals requiring action by an entity over which the company to whom the proposal was submitted has no control. For example, in *eBay Inc.* (Mar. 26, 2008), the Staff concurred that a proposal requesting that the company enact a policy prohibiting the sale of dogs and cats on the website of a joint venture owned by a wholly owned subsidiary of the company and TOM Online Inc. (an independent online portal and wireless internet company headquartered in China), in which the company had no role in day-to-day operations and over which it had no operating control, was excludable pursuant to Rule 14a-8(i)(6). The company argued that because of the nature of its joint venture relationship, it lacked the power or authority to take the action that would be required by the proposal, and the Staff concurred that no-action relief was merited. Similarly, the Staff concurred with exclusion of a proposal in *Beckman Coulter, Inc.* (Dec. 23, 2008) requesting that the company implement a set of executive compensation reforms at The Bank of New York Mellon, an unaffiliated bank which served as a trustee for the company under an indenture agreement. The company argued that it was impossible for it to implement the reforms requested by the proposal because it did "not directly or indirectly control" the bank nor did it "have any direct or indirect interest" in the bank. The company further argued that while the bank served as a trustee for the company under an indenture, "this contractual relationship [did] not give the [c]ompany the power or the authority to implement or influence the executive compensation reforms raised in the [p]roposal," and the Staff concurred that relief was merited pursuant to Rule 14a-8(i)(6). See also *Catellus Development Corp.* (Mar. 3, 2005) (in which the Staff concurred in exclusion of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *Ford Motor Co.* (Mar. 9, 1990) (in which the Staff concurred in exclusion of a proposal under the predecessor to Rule 14a-8(i)(6) because it "relate[d] to the activities of companies other than the [c]ompany [to whom the proposal was submitted] and over whom the [c]ompany ha[d] no control"); *Harsco Corp.* (Feb. 16, 1988) (in which the Staff concurred in exclusion of a proposal under the predecessor to Rule 14a-8(i)(6) requesting that the board of directors sign and implement a statement of principles relating to employment in South Africa where the company's only involvement with employees in South Africa was its ownership of 50% of the stock of a South African entity, and the owner of the remaining 50% interest had the right to appoint the entity's chairman, who was empowered to cast the deciding vote in the event of a tie).

Similar to *eBay* and *Beckman Coulter*, the Company does not have the power or authority to unilaterally compel third-party organizations that offer IRA plans to allow the shares in those plans to be directly registered as would be required by the Proposal. The Company has no control over third-party organizations that offer IRA plans, nor is it involved in their day-to-day operations. Furthermore, the relationship between the Company and third-party organizations that offer IRA plans which allow the purchase of Company stock is an even more attenuated relationship than those found in *eBay* and *Beckman Coulter*. Even if the Company were to request such services there is no guarantee that the third-party organizations would offer that service, or if they do offer such service continue to offer such service. As noted in the Proponent's supporting statement, several providers that had allowed the direct registration of Company shares under their IRA plans have ceased to offer such services.

Accordingly, for the reasons set forth above and consistent with the aforementioned precedents, the Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

**III. The Proposal May Be Excluded from the Company's 2024 Proxy Materials Pursuant to Rule 14a-8(i)(3) Because It Contains Materially False and Misleading Statements in Violation of Rule 14a-9 Under the Exchange Act.**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As the Staff explained in Staff Legal Bulletin No. 14B (Sep. 15, 2004), Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the company demonstrates that a statement is materially false or misleading. Applying this standard, the Staff has allowed exclusion of an entire proposal that contains false and misleading statements speaking to the proposal's fundamental premise. For example, in early 2007, a number of companies sought to exclude shareholder proposals requesting the adoption of a company policy allowing shareholders at each annual meeting to vote on an advisory resolution to approve the compensation committee report disclosed in the proxy statement. Because then-recent amendments to Regulation S-K no longer required the compensation committee report to address executive compensation policies, the Staff in each case permitted the companies to exclude the shareholder proposals. See, e.g., *Energy East Corp.* (Feb. 12, 2007); *Bear Stearns Cos. Inc*. (Jan. 30, 2007). See also *Ferro Corp.* (Mar. 17, 2015) (in which the Staff concurred in exclusion of a proposal requesting the company change its jurisdiction of incorporation from Ohio to Delaware because the proposal contained false assertions regarding corporate law in Ohio).

The Company believes that the Proposal contains misleading statements regarding the Company's and Computershare's ability to appoint custodians for IRA plans and/or the responsibility of the Company and Computershare in connection with such IRA plans. In particular, the Proposal requests that the Company work with Computershare to find a "suitable custodian for IRA account holders that wish to have their [Company] shares held in the DRS position." The Proposal confuses the roles of various market participants. Computershare is the Company's transfer agent, and as such is a record keeper of the Company. It does not provide custodian services to IRA plans. Computershare has attempted to clarify its position on its Frequently Asked Questions page (the "FAQ Page") on its website. Specifically, the FAQ Page says, "[a]s a transfer agent Computershare does not provide IRA or custodial services, and we have to reject or reverse any transfer that purports to register shares into an IRA account where Computershare is noted as the IRA custodian for the particular investor." Further, the Company is not in the business of administering IRA plans for shareholders and has not offered any such plans. As such, neither the Company nor Computershare have authority over custodians of third-party IRA plans nor are they obligated to act on behalf of members of such plans.

The inclusion of the Proponent's supporting statement and the Proposal contains misleading statements relating to the Proposal's fundamental premise that the Company and Computershare have authority over or are responsible for the third-party IRA plans, and that the Company and Computershare are able to control the appointment of custodians over such plans.

Further, it suggests that Company and Computershare bear responsibility for the tax treatment of shareholder's holdings. None of these assertions are true, and if included would materially mislead the public regarding the Company and Computershare's role in the IRA plans and market.

For these reasons, we believe that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

**CONCLUSION**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@olshanlaw.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 451-2300.

Sincerely,

Kenneth M. Silverman

Enclosures

cc: Mark Robinson, General Counsel and Secretary, GameStop Corp.
Daniel Lawson

**Exhibit A**

December 18, 2023

GameStop Corp.
625 Westpoint Parkway
Grapevine, TX 76051

Members of the Board,

My name is Daniel Lawson, and I would like to submit a shareholder proposal for the 2024 annual shareholder meeting. I am an individual investor with directly registered ownership of over $100,000 of GameStop Corp. stock. I have maintained this position for over two years and I intend to hold these shares through the date of the 2024 annual shareholder meeting.

Over the last two years, many GameStop (GME) shareholders have sought ways to directly register their GME shares inside their Individual Retirement Accounts (IRA's). The process requires the use of non-broker custodians willing to directly register the shares with Computershare. Hundreds of GME shareholders have chosen Ally Invest Group, Inc. (Ally) and MainStar Trust (MainStar) since September of 2021. Unfortunately, this was not a permanent solution.

- November 2021: I transferred my IRA to Ally, paid applicable fees, and my GME shares were directly registered within my IRA. Surprisingly, my Computershare statement showed that Apex Clearing (Apex) was the custodian of record, not Ally. Just seven months later, in June of 2022, Ally notified me that Apex was unable to continue as custodian. Apex then sent me an undated letter stating that they were processing the transaction as a taxable distribution instead of an IRA transfer. The cost to me was in excess of $20,000, including taxes and fees paid to Ally. There is evidence this happened to hundreds of GME shareholders.

- June 2023: MainStar notified GME shareholders that their IRA shares held in DRS position would be moved to MainStar's Depository Trust Clearing Corp account. Based on the list of shareholders eligible to vote at the 2023 annual meeting (current as of April 21, 2023), this affected 677 individual GME shareholders and caused the removal of over 1.2 million shares from the DRS position. It should be noted that MainStar charged transaction and maintenance fees for these active accounts, so there were real costs borne to GME shareholders.

In both cases, the custodian claimed they were unable to continue holding IRA shares (GME specifically) in the DRS position. No further explanation was given and it's not clear if the ultimate decision was made by the custodian, the clearing houses, Computershare, or all three. The action of these firms is equivalent to a bait-and-switch scam where investors pay for a service they ultimately do not receive. Action by the Board is required to prevent future abuse of GME shareholders.

My proposal is simple – protect shareholders by working with your transfer agent to find a suitable custodian for IRA account holders that wish to have their GME shares held in the DRS position. If Computershare is unable or unwilling to assist, GME should consider switching transfer agents. Per SEC Rule 14a-8, I respectfully request that this proposal be put to the shareholder body for a vote.

Thank you,

Daniel Lawson, PhD